

Application No. 10/636,069
Amendment dated April 24, 2006
After Final Office Action of February 22, 2006

Docket No.: 66192-0009

REMARKS

PENDING CLAIMS

The Final Office Action maintained the Examiner's rejection of claims 1-14. The Final Office Action mistakenly stated that claim 40 had been withdrawn. Claim 40 was previously amended; it was not withdrawn. Claims 1-14 and 40 are pending in the case.

INTERVIEW SUMMARY

A telephonic interview was held among Examiner Weier, Inventor Schmidt and attorney Kennedy on March 23, 2006, where cited prior art references were discussed and no agreement was reached. An additional declaration under 37 C.F.R. § 1.132 was provided based upon the guidance provided during that interview.

REJECTION UNDER 35 U.S.C. § 103

Applicants respectfully traverse the final rejection of the pending claims under 35 U.S.C. § 103, using Marsland as the primary reference. All of the pending claims require a high-protein wafer cookie to be light and airy. Based upon the teachings of Marsland, no such wafer cookie could be achieved.

Marsland described that his high protein food items could contain no less than 25% protein. Marsland ¶ 18. Marsland prepared all of his food items in a conventional manner, and did not suggest a departure from conventional cooking methods. Schmidt Decl. ¶ 12. Each example started with dry ingredients, especially wheat protein isolates, and each example resulted in a conventional solid dough rather than a pumpable fluid batter. Schmidt Decl. ¶ 5. Marsland's recipes, as demonstrated in the examples, included conventional leavening agents.

Inventor and professional chef, Jimmy Schmidt, prepared a wafer according to the Marsland recipe having a protein content of 29%, which is very near the lowest end that Marsland teaches. Even though it contained leavening agent, the dough was solid, and the end wafer very dense. The end wafer density was 240 grams per 450 mm X 350 mm sheet. Since 29% is at or near the low end of protein content for a Marsland wafer, this density is as "light

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and airy” as a wafer can get if it is prepared according to the teachings of Marsland. Schmidt Decl. ¶ 7.

In contrast to Marsland, Inventor Schmidt prepared two sets wafers according to the methods taught in the specification of the above-captioned patent application. Inventor Schmidt started with wet ingredients, and created a pumpable fluid to pump into a baking sheet to make my high protein wafers. The first set of Schmidt’s wafers had a protein content of about 26%, and the second set of Schmidt’s wafers had a protein content of about 80%. Schmidt Decl. ¶ 8.

The density of the wafers of Schmidt’s first set varied from 100 grams to 103 grams per 450 mm X 350 mm sheet. This is less than half the density of Marsland’s lightest wafer, even though the protein content is about the same. Schmidt Decl. ¶ 9. The density of the Schmidt’s second set of wafers varied from 110 grams to 120 grams per 450 mm X 350 mm sheet. This is less than about half the density of Marsland’s lightest wafer, even though the protein content is more than 2.5 times that of Marsland’s lightest wafer. Schmidt Decl. ¶ 10.

Based upon the teachings of Marsland, it is a surprising result to one of ordinary skill in the art that Inventor Schmidt could achieve wafers having a wide range of high protein content that nevertheless have a density of less than about half that of Marsland’s lightest wafer. Schmidt Decl. ¶ 11. Adding additional leavening agent to the recipes of Marsland would not cure Marsland’s density problem – it certainly would not change to the consistency of the Marsland wafer to make it half as dense while maintaining its protein content.

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Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. 66192-0009 from which the undersigned is authorized to draw.

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Respectfully submitted,


By Linda D. Kennedy

Registration No.: 44,183
RADER, FISHMAN & GRAUER PLLC
39533 Woodward Avenue
Suite 140
Bloomfield Hills, Michigan 48304
(248) 594-0619
Attorney for Applicant